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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,809	07/17/2003	Jean-Louis Gueret	124370	8971
25944	7590	10/11/2005	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			WALCZAK, DAVID J	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/620,809

Applicant(s)

GUERET, JEAN-LOUIS

Examiner

David J. Walczak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) 3,9,10,23-25,27,33,39,40,53-55,59 and 63-65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,11-22,26,28-32,34-38,41-52,56-58 and 60-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/17/03 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/03, 4/05, 7/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Group I, Species I, Sub-Species A in the reply filed on 8/26/05 is acknowledged. The traversal is on the ground that the entire application can be made without serious burden. This is not found persuasive because the consideration of 65 claims which cover three groups, nine species and two sub-species is clearly considerably more burdensome than the consideration a lesser amount of claims which cover a single group, species and subspecies. The Applicant contends that claims 1-8, 11-23, 26-38, 41-53 and 56-62 read on the elected embodiment, however, the structure defined in claims 3, 23, 27, 33, 53 and 59 is not present in the elected embodiment (the features defined in these claims are present in other embodiments. Accordingly, claims 3, 9, 10, 23-25, 27, 33, 39, 40, 53-55, 59 and 63-65 are withdrawn from further consideration and claims 1, 2, 4-8, 11-22, 26, 28-32, 34-38, 41-52, 56-58 and 60-62 will be examined herein.

The requirement is still deemed proper and is therefore made FINAL.

### ***Abstract***

The abstract of the disclosure is objected to because phrases that can be implied, such as "The present invention provides" and legal phraseology such as "means" and "said" should not be present therein. Correction is required. See MPEP § 608.01(b).

### ***Drawings***

The drawings are objected to because Figure 26 does not contain line XXVII as indicated in paragraph 092 of the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

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regards as the invention. In regard to claim 28, an antecedent basis for "the housing containing the first substance" should be defined.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5-8, 11-13, 15, 17, 21, 26, 28-30, 32, 35-38, 41-43, 45, 47, 51, 56-58, 60 and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Breidenbach et al. (hereinafter Breidenbach). In regard to claims 1 and 62, Breidenbach discloses a package and dispensing device comprised of a receptacle (viewing Figure 5, the lower receptacle 6 defines the "receptacle") containing a first substance, an application surface 10 secured to the receptacle and a closure capsule 15, 16, 6 (the upper receptacle 6) removably fixed on the receptacle wherein the closure capsule includes a fixing means enabling the capsule to be fixed to the receptacle (via threads 11) and at least one housing 6 containing a second substance wherein the housing can be open from an end of the capsule remote from the fixing means for removing the second substance from the housing. In regard to claim 2, the capsule includes a removable portion 6, 16 and a base portion 15 wherein the housing is defined by the removable portion. In regard to claim 5, the removable portion includes a body 6 and a removable lid 16. In regard to claim 6, the lid and body close the housing in a "substantially"

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leaktight manner. In regard to claim 7, the body 6 of the removable portion is fixed on the base portion 15 (via element 16) by a screw fastening 23,24. In regard to claim 8, the substance is a "care product". In regard to claim 11, the application surface is defined by a first applicator member 10. In regard to claim 12, the applicator is engaged in an inside space of the closure capsule when the capsule closes the receptacle. In regard to claim 13, the applicator member may include a non-porous material (i.e., an applicator ball, see column 2, lines 25-27). In regard to claims 15 and 17, the applicator member may be porous and compressible (see column 3, lines 36-39). In regard to claim 21, the closure capsule includes a lid 16 for closing the housing which can be removed in order to enable access to the housing. In regard to claim 26, the capsule is fixed to the receptacle via screw fastening 11. In regard to claim 28, the closure capsule enables leak-tight closure of the housing. In regard to claim 29, the capsule is "configured to isolate from the outside of the application surface" when in place on the receptacle. In regard to claim 30, the second substance is "complementary" to the first substance. In regard to claims 32, 35-38, 41-43, 45, 47, 51, 56-58 and 60, as discussed supra, the Breidenbach reference discloses the claimed structure.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 14, 16, 18-20, 22, 34, 44, 46, 48-50 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breidenbach. In regard to claims 4 and 34, although the Breidenbach reference does not disclose the specific colors of the various elements, it is the Examiner's position that the various elements can be of any suitable color, as desired by a user, without effecting the overall operation of the device. In regard to claims 14, 16, 18-20, 44, 46 and 48-50, although the Breidenbach reference does not disclose the specifically claimed applicators, the Examiner takes official notice that such applicators are commonly employed on perfume/cosmetic dispensers in order to enable the product to be effectively dispensed and applied. Accordingly, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the Breidenbach device can employ any of the claimed applicators without effecting the overall operation of the device, especially since this reference discloses that various types of applicators may be employed (see column 2, lines 25-27 and column 3 lines 36-39). In regard to claims 22 and 52, although the lid is disclosed as being threaded, and not hingedly attached, the Examiner again takes official notice that such lids are commonly hingedly attached to the respective container in order to enable the lid to remain attached when open. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to hingedly attach the lid of the Breidenbach device in order to enable the lid to remain attached when open.

Claims 31 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breidenbach in view of Wu. Although the closure capsule does not include a mirror thereon, attention is directed to the Wu reference, which discloses another perfume dispenser wherein a mirror 22 is positioned thereon in order to enable a user to view ones self as desired. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a mirror on the Breidenbach dispenser in order to enable a user to view ones self if desired.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Bratby-Carey, Choo et al. and Sapery references are cited for disclosing other dispensers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
10/6/05